

ST 03-0028-PLR 11/20/2003 MOTOR FUEL TAX

Under the Motor Fuel Use Tax rules at 86 Ill. Adm. Code 500.325(b), in the case of a carrier using independent contractors under long-term leases (more than 30 days), the lessor and lessee will be given the option of designating which party will report and pay fuel use tax. If the designated party does not fulfill its obligations, the Department may proceed against either party. (This is a PLR).

November 20, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see www.revenue.state.il.us), is in response to your letter of February 13, 2003. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Pursuant to 2 Ill. Adm. Code § 1200.110, I write to request a private letter ruling on behalf of my client, AAA. An executed Power of Attorney form authorizing my representation of AAA in this matter is enclosed. The tax in question is the motor fuel use tax imposed by 35 ILCS 505/13a.4, which is collected and administered under the International Fuel Tax Agreement ('IFTA').

I.

STATEMENT OF THE FACTS AND OTHER PERTINENT INFORMATION

AAA is a for-hire motor carrier that operates commercial motor vehicles in Illinois and throughout the United States. As such, AAA pays the Illinois motor fuel use tax and similar taxes imposed by other states pursuant to the terms and conditions of IFTA. Illinois serves as AAA's base jurisdiction with respect to IFTA. Thus, to the extent AAA pays IFTA taxes, it reports and pays its IFTA liability to the State of Illinois.

AAA generally provides trucking services to its customers through the use of commercial motor vehicles leased from independent contractors known as owner-operators and fleet operators. Under federally-regulated lease agreements, these independent contractor-lessors lease both their vehicles and their driving services to

AAA and thereby provide transportation services to the public pursuant to AAA's operating rights granted by the U.S. Department of Transportation.

For purposes of this ruling, enclosed is a copy of the subject Independent Contractor Operating Agreement ('Lease Agreement'). Pursuant to Paragraph 7 of the Lease Agreement, which applies to all leases of 30 days or more, the lessor is responsible for all operational expenses, including '[a]ll fuel use taxes' related to the vehicle leased to AAA. Even more specifically, Paragraph 11 of the Lease Agreement provides for an election by the lessor to 'maintain its own IFTA Fuel Tax Permit and to calculate, report and pay all quarterly fuel taxes for the operation of the [vehicle].' Paragraph 11 goes on to provide as follows:

Upon such election by INDEPENDENT CONTRACTOR, INDEPENDENT CONTRACTOR shall be solely responsible for calculating, reporting and paying all fuel taxes owed for the operation of the [vehicle], and INDEPENDENT CONTRACTOR shall indemnify, defend and hold CARRIER harmless against same.

Thus, as set forth above, AAA's independent contractors may elect to obtain their own IFTA permits and pay their own IFTA taxes pursuant to Paragraph 11 of the Lease Agreement. When such election occurs, AAA believes it is absolved of all legal responsibility for the payment of IFTA taxes associated with the leased vehicle. However, upon informal inquiry to a field representative of the Illinois Department of Revenue ('Department'), AAA has been told that, if a lessor defaults on its obligation to pay its own IFTA taxes, then AAA can and will be held responsible by the Department for payment of those taxes.

II.

STATEMENT OF THE ISSUE

The specific issue upon which AAA requests a private letter ruling is as follows:

If pursuant to AAA's Lease Agreement a lessor elects to obtain his own IFTA permit and report and pay all IFTA liabilities associated with the operation of the vehicles he leases to AAA, is AAA absolved of all legal responsibility for payment of IFTA taxes associated with the leased vehicle, or, if the lessor fails to fulfill his obligations to pay IFTA taxes, will the Department attempt to hold AAA responsible for payment of the lessor's tax liability?

To the best of our knowledge, the Department has not previously ruled on this question for AAA, and AAA has not previously submitted this question to the Department but withdrawn it before a letter ruling was issued. AAA is not currently engaged in any audit or litigation with the Department.

III.

STATEMENT OF AUTHORITIES

We note that an inquiry similar to AAA's has been the subject of a general information letter dated November 29, 2001, a copy of which is enclosed. As indicated therein, the taxpayer in question received conflicting information from Department representatives on its inquiry. However, in issuing its general information letter, the Department cited substantial authority (much of which is discussed below), but did not directly answer the taxpayer's question. Therefore, this private letter ruling is being requested.

The Department has entered into IFTA pursuant to 35 ILCS 505/14a. Under that statute, a copy of which is enclosed, the State of Illinois is not permitted to 'establish, maintain, or enforce any law or regulation that has fuel use tax reporting requirements or that provides for the payment of a fuel use tax, unless that law or regulation is in conformity with [IFTA].' Accordingly, the most pertinent authority related to AAA's inquiry is IFTA and its Articles of Agreement.

IFTA Article R530.200 provides for the allocation of tax reporting and payment as between motor carriers like AAA and its independent contractor-lessors as follows:

Long-Term Leases. In the case of a carrier using independent contractors under long-term leases (30 days or more), the lessor and lessee will be given the option of designating which party will report and pay fuel use tax. In the absence of a written agreement or contract, or if the document is silent regarding responsibility for reporting and paying fuel use tax, the lessee will be responsible for reporting and paying fuel use tax.

(Emphasis supplied). Thus, in the absence of an agreement to the contrary, AAA would certainly be legally responsible for IFTA liabilities associated with operation of the lessors' vehicles. However, Article R530.200, a copy of which is enclosed, plainly affords AAA the ability to agree with the lessors that the lessors 'will report and pay fuel use tax.'

We note that Illinois law is properly consistent with this rule. Under 35 ILCS 505/13a.4, a copy of which is enclosed, the Department is directed to provide by regulation 'for the allocation between lessors and lessees of the same commercial motor vehicle or vehicles of the responsibility as a motor carrier for the reporting of mileage and the liability for tax ... and for all other duties imposed upon motor carriers by this Act. (Emphasis supplied). The Department in fact has complied with this statutory mandate in 86 Ill. Adm. Code § 500.325(b) (copy enclosed), which provides that motor carriers and their lessors may agree by contract as to which party 'will report and pay fuel use tax.' Similarly, the Illinois Motor Fuel Use Tax Carrier Compliance Manual (pertinent portion enclosed), also provides that, when the parties so agree, they may designate the lessor as the party who 'will report and pay motor fuel use tax.'

Accordingly, every authority we have uncovered permits independent contractor-lessors to assume the responsibility of paying IFTA taxes, and we can find no authority supporting the proposition that the carrier will nevertheless be held liable for the lessor's taxes if the lessor defaults on its obligations. Nevertheless, AAA has been told informally by a Department field representative that it would be held responsible by the Department if a lessor fails to pay the taxes he has agreed to pay. We respectfully submit that AAA has been given legally inaccurate information and that AAA is entitled to a private letter ruling to that effect. In our view, there is no basis by which AAA should be held responsible for tax liabilities assumed by lessors pursuant to the terms and

conditions of IFTA and Illinois law when it is the lessor who has procured the IFTA permit on the vehicle and agreed to pay all liability associated therewith. Indeed, one would question why any motor carrier would ever enter into the very agreement for payment of taxes expressly contemplated by IFTA if that agreement has no meaningful effect. We thus ask for a private letter ruling confirming that, when AAA's lessors agree to pay their own IFTA taxes, the lessors alone are liable for those taxes.

IV.

CONCLUSION

We appreciate this opportunity to request a private letter ruling from the Department. If any further information is required in order to answer AAA's inquiry, please contact me at any time. Thank you for your assistance.

The Motor Fuel Tax Law, 35 ILCS 505/1 et seq., imposes a tax upon the use of motor fuel upon highways of this State by commercial motor vehicles. Every commercial motor carrier must pay the tax imposed, which is calculated on the amount of motor fuel consumed on highways within the State. Section 13a.2 of the Motor Fuel Tax Law states that each motor carrier must keep records which accurately reflect the type and number of gallons of motor fuel consumed, the number of miles traveled with each type of fuel on the highways of each jurisdiction and the highways of Illinois, the type and number of gallons of tax paid fuel purchased in this State, and every jurisdiction, and the number of miles traveled and the amount of fuel consumed on the highways of this State and every jurisdiction. The law further requires that licensees shall preserve the records for a period of 4 years from the due date of their returns or the date filed, whichever is later.

As you noted, Section 13a.4 of the Motor Fuel Tax Law provides that the Department shall by regulation provide for the allocation between lessors and lessees of the same commercial motor vehicle or vehicles of the responsibility as a motor carrier for the reporting of mileage and the liability for tax arising under Section 13a.5 of the Act, and for registration, furnishing of bond, carrying of motor fuel use tax licenses, and display of decals, and for all other duties imposed upon motor carriers by this Act. According to the Department's regulations at 86 Ill. Adm. Code 500.325(b), in the case of a carrier using independent contractors under long-term leases (more than 30 days), the lessor and lessee will be given the option of designating which party will report and pay fuel use tax. In the absence of a written agreement or contract, or if the document is silent regarding responsibility for reporting and paying fuel use tax, the lessee will be responsible for reporting and paying fuel use tax. If the lessee (carrier), through a written agreement or contract, assumes responsibility for reporting and paying fuel use taxes, the base jurisdiction for purposes of this Part shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the commercial motor vehicle is registered for vehicle registration purposes by the lessor.

The language of Section 13a.4 also states, however, that the opportunity to choose which party will be responsible for reporting and paying the tax is "[t]o avoid duplicate reporting of mileage and payment of any tax arising therefrom under Section 13a.3 of the Act." This provision does not mean that if one party agrees to be responsible, but does not report and pay the tax, the other party has no obligation. The agreement is for the ease of the parties. If the party that agreed to report and pay the tax does not uphold its part of the agreement, the other party can proceed against that party. The agreement between the parties does not prevent the Department from fulfilling its obligation to collect the tax by proceeding against either party.

The facts upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
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